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EXAMINER

CHIN, PAUL T

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/719,076

Applicant(s)

ROBERTS, D. DAVID

Examiner

PAUL T. CHIN

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 9, 10 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9, 10 and 12-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Applicant's amendment filed September 12, 2005, and the arguments presented therewith have been fully considered and are persuasive. Therefore, the claim rejections have been withdrawn. However, upon further consideration, the arguments are moot in view of a new ground(s) of rejection. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL.

### ***Election/Restrictions***

2. Applicant cancels claims 1-8 and adds new claims 9-20 including new structural elements and a method for transporting food objects in the provided amendment filed February 28, 2005. Applicant's election without traverse of Group I, readable on claims 9-19, in the reply filed on June 20, 2005, is acknowledged. Applicant's election with traverse of the species of Figs. 1-2, readable on claims 9,10, and 12-18, in the reply filed on June 20, 2005, is also acknowledged. The traversal is on the ground(s) that "searching the identified species together imposes a serious burden on the Examiner" and "the Examiner must demonstrate by either appropriate explanation of separate classification or separate in the art or a different field of search". The arguments are incorrect and not persuasive because the examiner clearly states separate classification or separate in the art or a different field of search (see sections 1 and 2 of previous office action, mailed May 20, 2005). Moreover, applicant provides new claims 9-20 which includes new structural elements, which would require further extensive search such as classes 30 (scraper), 99 (food scooper), and 15 (dust pan or scoop). Further, the species of Figs. 1-2 shows a generally circular-shaped handle in combination with other structural elements and Figs. 3-4 shows an arcuate wall in combination with other structural elements and the newly recited claims are patentably distinct species. Therefore, the requirement is still deemed proper and is therefore made FINAL.

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3. Claim 20 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, Group II, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on June 20, 2005.

#### ***Specification***

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

#### ***Claim Objections***

5. Claims 12-14, 16, and 17 are objected to because of the following informalities: it appears that the word "an" after "comprises" (claim 12, line 2) should be deleted, and claims 16 and 17, line 2, the word "comprise" should be changed to -- comprises --. Applicant also recites "a terminating end edge" (claims 12-14, line 2), and the recited claimed language is unclear and it appears that -- a terminating edge -- may be appropriate. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The exact meaning of the recited phrase "the terminating end edge...terminates above each of the first and second lateral side walls" (claim 13) is not clearly understood. None of the figures shows that the terminal edge of the arcuate handle (3) terminates above the lateral sidewalls (4a,4b). Figures 2 and 4 only show that the terminal edge of the arcuate handle (3) terminates above the base plate (11). Moreover, the exact meaning of the recited phrase "the terminating end edge of the arcuate handle is generally forwardly facing toward the open end of the planar base" is not clearly understood as to how "the terminating end edge of the arcuate handle" is generally forwardly "facing toward the open end of the planar base". It appears that the elected figures 1-2 do not show the recited limitation.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 9,10,12-14, and 16-18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Snedeker (774,994).

Snedeker (774,994) discloses a device comprising a planar base (2) having an open end, first and second lateral side walls (1,1) extending upwardly along the opposing sides of the planar base, an arcuate flange (5a), which can be considered as an arcuate handle, forming a continuous curve from the planar base.

Re claims 10 and 18, figure 4 shows a generally tubular configuration having a generally circular transverse cross-section.

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Re claims 12-14, figure 4, as best understood, teaches that the terminating edge of the arcuate handle is substantially forwardly facing toward the open end and the terminating end (the area where the lateral sidewalls meets) is substantially facing rearwardly and substantially proximate the planar base. Note that the word "proximate" can be interpreted as "close" according to Merriam-Webster Dictionary.

Re claim 16, the rearwards of the lateral sidewalls enclose the open ends of the arcuate handle as shown in figures 1 and 2.

10. Claims 9,10,12,13, and 16-18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rennie (Re 7,866).

Rennie (Re 7,866) discloses a device comprising a planar base (B) having an open end, first and second lateral side walls (e,e) extending upwardly along the opposing sides of the planar base, an arcuate handle (b,b') substantially forming a continuous curve from the planar base.

Re claims 10 and 18, figures 2 and 3 show a generally tubular configuration having a generally circular transverse cross-section.

Re claims 12 and 13, figure 2, as best understood, teaches that the terminating edge of the arcuate handle is substantially forwardly facing toward the open end and terminates above each of the sidewalls.

Re claim 16, the rearwards of the lateral sidewalls enclose the open ends of the arcuate handle as shown in figure 1.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snedeker (774,994).

Snedeker's device (774,994), as presented in section 9 above, shows metal planar base (2) and metal sidewalls (1,1) (lines 76-88 of page 1), but does not show that the device is being made of stainless steel. Accordingly, it would have been obvious to those skilled in the art on the Snedeker's device (774,994) to be made of stainless stain in order to provide a reliable device and also to prevent corrosion.

13. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rennie (RE 7,866) in view of Brownell (6,234,549).

Rennie (RE 7,866), as presented in section 10 above, does not show that the device is being made of stainless steel. However, Brownell (6,234,549) teaches a scoop having a blade being made of a stainless steel (Col. 7, lines 37-55). Accordingly, it would have been obvious to those skilled on the Rennie's device (RE 7,866) to be made of stainless stain as taught by Brownell (6,234,549) in order to provide a reliable device and also to prevent corrosion.

#### ***Response to Arguments***

14. Applicant's arguments with respect to claims 9,10, and 12-18 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Akre (3,802,729) shows a rounded handle (12), a planar base (10), and sidewalls (14,16).

Leggett (Des. 23,068) shows a rounded handle and a planar base or blade.

Gabel (914,484) and Oursler (606,809) shows a scoop or dust pan having a planar base, side walls, and an arcuate handle, wherein the rear ends of the sidewalls enclose the arcuate handle.

16. Applicant's amendment (the newly introduced claims 9,10, and 12-18) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571) 272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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 11/28/05  
DEAN J. KRAMER  
PRIMARY EXAMINER